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IN THE

SUPREME COURT OF THE UNITED STATES

No. 291

METHODIST RIVER OAKS APARTMENTS, INC.,
Petitioner,

vs.

CITY OF WACO AND LA VEGA INDEPENDENT SCHOOL DISTRICT OF McLENNAN COUNTY, TEXAS,
Respondents.

RESPONDENTS' BRIEF IN REPLY TO APPLICATION FOR WRIT OF CERTIORARI OF PETITIONER, METHODIST RIVER OAKS APARTMENTS, INC.

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RESPONDENTS' BRIEF IN REPLY TO APPLICATION FOR WRIT OF CERTIORARI OF PETITIONER, METHODIST RIVER OAKS APARTMENTS, INC.

This is Respondents' Reply to Petitioner's Application for Writ of Certiorari. Respondents are the City of Waco, Texas, and La Vega Independent School District of McLennan County, Texas, and Petitioner is Methodist River Oaks Apartments, Inc.

(a) Respondents accept Petitioner's reference to the only opinion rendered below which was that of the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas.

(b) Respondents do not accept Petitioner's statement concerning the ground on which the jurisdiction of this

Court is invoked because under the uncontroverted evidence, Petitioner is not a "purely public charity," as provided by Article 8, Sec. 2 of the Texas Constitution and Article 7150(7) R.C.S. Tex. 1925, as interpreted by the judicial decisions, and the undisputed evidence was as follows:

1. Neither Methodist River Oaks Apartments, Inc., nor its trustees or constituent organizations made any financial contributions to the enterprise.

2. The scale of rentals was determined and fixed so that the contemplated rental income would discharge operation expenses, depreciation, insurance costs, interest and requirements to amortize the principal loan payments within the loan period.

3. Ad valorem taxes were expressly named as one of the factors of operation expenses.

4. Rental payments as so computed were exacted of every tenant and an advance deposit required in order to insure a portion of the rental contractual obligation and there is no evidence in the record that Petitioner deviated from this policy.

5. The enterprise is planned and organized to be a commendable self-liquidating venture and when satisfaction of the indebtedness is accomplished by the owner corporation, it will come into property free of a debt that has been paid off by the rentals of tenants.

6. Petitioner's charter and by-laws showed Petitioner's sole purpose is to provide housing for modest and low income families at minimum costs and subsidized rental, if necessary.

7. The only other purpose was that of pure conjecture produced through witness Lowe by unadmitted testimony as noted on Page 4 of Petitioner's Application.

8. Petitioner also applies the label of "negro ghetto neighborhood" to the portion of Waco from which Petitioner draws its tenants but that is not an apt description and it is not to be found in the record as describing any portion of the City of Waco. Use of that term in Petitioner's Application is unfortunate.

Therefore, Petitioner was not denied equal protection of the law provided by Amendment XIV, Section 1 of the Constitution of the United States and jurisdiction of this Court should not have been invoked.

(c) The question presented for review by Petitioner is;

> Did the refusal of tax exemption on Petitioner's apartment complex violate the equal protection provision of Amendment XIV, Section 1 of the Constitution of the United States?

(d) The Constitutional provisions and statutes which the case involved are:

1. Amendment XIV, Section 1 of the Constitution of the United States;
2. Article 3, Section 56 of the Texas Constitution;
3. Article 8, Section 2 of the Texas Constitution;
4. Article 7150(7), R.C.S. Texas 1925, as amended by Acts of the Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Section 1, Vernon's Annotated Texas Civil Statutes.

(e) The following are the material facts of the case:

Petitioner is an apartment complex of 152 units self-advertised in Waco newspapers as renting for $72.50 to $76.50, centrally air conditioned and heated, each with 30-inch range, venetian blinds, prompt maintenance, central TV antenna and 11.8 cubic foot refrigerators. Petitioner is open to anyone whose income is high enough to pay either $72.50 or $76.50 monthly rental and make a $25.00 deposit.

Those who are unable to pay the stated rental are evicted and there have never been any charity tenants although only seventy-nine per cent (79%) of the apartments were occupied as of August 31, 1965. The Waco metropolitan area's median gross rent paid by those in renter-occupied housing units in 1960 was fifty-five dollars ($55.00) per month which *included* the cost of utilities. Maximum income limits placed on Petitioner's tenants extend to seven thousand six hundred dollars ($7,600.00) per year. The median income for *all* families living in the Waco area was four thousand eight hundred fifty-nine dollars ($4,859.00) per year in 1960.

Decent, standard housing in Petitioner's immediate area is available on an integrated basis from sources other than Petitioner. In 1960 there were 2,036 available vacant housing units in metropolitan Waco. Some of Petitioner's tenants have vacated Petitioner in favor of this privately owned housing which is taxed by Respondents. Apartments operated by the Public Housing Authority on an integrated basis are available at rentals ranging from $23.00 to $71.00 per month and have an average occupancy of ninety per cent (90%). Petitioner is in direct competition with private housing in its immediate area.

Petitioner was organized under the Texas Non-Profit Corporation Act, but Petitioner receives thirty per cent (30%) of the receipts from the owners of laundries located on Petitioner's premises. Said profit is *not* used to benefit the apartment complex or the tenants.

Petitioner admits on Page 9 of its Application it "never claimed to alleviate poverty, as such" so its activities do not directly lessen a financial burden which would otherwise be borne by the taxpayer.

Petitioner's actual purpose for organizing Methodist River Oaks Apartments, Inc., is rather obscure when one attempts to make that determination from the record. Petitioner's charter and by-laws were placed in evidence, but

by Petitioner's own admission, Petitioner has not attempted to pursue those purposes.

Petitioner attempted to give the apartment complex a purpose which Petitioner felt should be regarded as a tax exempt charitable purpose. This was attempted by offering Lowe's inadmissible testimony as evidence of such purpose. The Court correctly ruled Lowe could not state what were the incorporators' mental processes involved in organizing Petitioner. Testimony of another person's mental process does not even have the credibility of the rankest hearsay.

Petitioner, on Page 4 of its Application, now contends the apartments were constructed "for the purpose of bettering the housing for negro people." Petitioner, on Page 5 of its Application, contends the apartments would provide a "possible standard." Petitioner has not produced evidence which shows the apartment complex accomplishes such purposes assuming the accomplishments of such purposes would make Petitioner tax exempt under Texas law.

There is decent, integrated vacant housing for persons in Petitioner's area so the record does not show Petitioner provides a unique service or prevents a substantial number of persons from becoming burdens to society and to the State.

It is true the City of Waco does not tax its Y.M.C.A. or Y.W.C.A., but only because they meet the necessary requirements of Texas law and not because they are specifically exempt under the Texas Constitution which they are not. The Texas Constitution does *not* specifically exempt the Y.M.C.A. or Y.W.C.A. from ad valorem taxation.

The Court of Civil Appeals addressed itself directly to the contention made by Petitioner in Plaintiff's Second Amended Original Petition and quoted in Petitioner's Application on Page 6. The Court's opinion reads:

> ". . . it provides no service which the State would be obligated to assume."

Petitioner's Application for Writ of Error and Motion for Rehearing to the Texas Supreme Court was overruled.

(f) Respondents' argument:

Since petitioner relies upon the theory of "equal protection under the laws" this case is very simple. If Petitioner is treated as are all others by the law and authorities, there is no denial of equal protection under the laws. *Delta Airlines v. Coleman,* 131 SE 2d 768, certiorari denied, 84 S. Ct. 195.

Petitioner bases its claim to a tax exempt status as an institution of purely public charity. In Texas, the Constitution, statutes and courts have laid down very consistent and logical rules for determining whether or not a particular institution is exempt.

In Texas the Constitution must provide the Legislature with the authority to enumerate which activities are to be granted a tax exemption and the Legislature is prohibited from enlarging upon such exemption. *Dickison v. Woodmen of the World Life Ins. Co.,* 280 SW 2d 315, 317 (Tex. Civ. App. 1955) Refused. Article 8, Sec. 2 of the Texas Constitution provides that the Legislature may exempt from taxation property which is "owned and used exclusively by" institutions of "purely public charity." The *Dickison v. Woodmen of the World Life Ins. Co.,* supra, case made it clear that the Texas Legislature could exempt all institutions of purely public charity or exempt none at all or exempt only those which performed some specific charitable function. That case held:

> "Two things are apparent from a reading of this constitutional provision . . . the Legislature may restrict the exemption . . ." (280 SW 2d 315, 317).

The Texas Legislature chose to be restrictive and the lim-

itations so imposed are apparent from the language of Article 7150(7), R.C.S. Texas 1925:

> "Art. 7150. Exemption from taxation
>
> "7. Public charities. All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its law to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

Article 3, Sec. 56 of the Texas Constitution also prohibits the Legislature from passing any local or special law exempting property from taxation unless provided in the Constitution. All statutes granting tax exemptions must be strictly construed in Texas and this is a long standing rule first laid down by the Texas Supreme Court in *Morris v. Masons*, 5 SW 519, 520 (Tex. Sup. Ct. 1887), and followed ever since. The case of *Santa Rosa Infirmary v. City of San Antonio*, 259 SW 2d 926, 931 (Tex. Sup. Ct. 1924) put it very succinctly:

> "Exemptions from taxation are never favored, and in the construction or interpretation of a law extending exemption from taxation to any citizen or class of property all doubts are resolved against the exemption."

The Texas Supreme Court reiterated the reason for a strict construction in *River Oaks Garden Club v. City of Houston,* 370 SW 2d 851, 854 (Tex. Sup. Ct. 1963) which reads:

> "The reason of these rules would seem to be that it is but just and equitable that the property of all persons and associations of persons should bear the burdens of government in equal proportions; and hence it is to be presumed that the law makers did not intend to make an exception in favor of any class unless that intention be clearly expressed."

The test which the Courts have evolved to determine tax status is of three parts and these parts have also been interpreted. An institution must meet each part of the test or it fails to meet the necessary requirements. This test was first formulated in *City of Houston v. Scottish Rite Benevolent Association,* 230 SW 978, 981 (Tex. Sup. Ct. 1921), when the Court held that an institution to be a purely public charity must:

1. Make no gain or profit;

2. Accomplish ends wholly benevolent; and

3. Benefit persons indefinite in number and personality by preventing them, through absolute gratuity, from becoming burdens to society or the State.

Since we now have the test before us, let us examine Petitioner's operation to determine whether or not the test is met.

First, a purely public charity must "make no gain or profit." Petitioner fails to meet the first test because Petitioner has made a profit from a laundry operated by a business foreign to Petitioner's operation and the business was located on Petitioner's premises.

Also involved in the test is the "exclusive use" rule which is quoted from *David Graham Hall Foundation v. High-*

land Park Independent School District, 371 SW 2d 762, 764 (Tex. Civ. App. 1963) ref. N. R. E.:

> "The Constitutional requirement is two-fold: the property must be owned by the organization claiming the exemption; and it must be exclusively used by the organization, as distinguished from a partial use by it and a partial use by others whether the others pay rent or not."

The Court in the same case went on to say:

> "If rent is received from property belonging to a charitable institution, the property is not exempt from taxation though the rental revenues are used solely for the benefit of the charitable institution."

Since Petitioner allows other businesses to use its property for profitable pursuits and Petitioner makes a profit from this enterprise, there can be no exemption. Petitioner fails to "exclusively use" its property and does make a profit. Therefore, Petitioner is not exempt under the Texas Constitution, statute or case law.

Second, a purely public charity must "accomplish ends wholly benevolent." On Page 9 of Petitioner's Application, Petitioner admits it was never the purpose of the apartment complex to alleviate poverty as such. To accomplish ends wholly benevolent an institution of purely public charity must accomplish certain ends. In *River Oaks Garden Club v. City of Houston*, 370 SW 2d 851, 854 (Tex. Sup. Ct. 1963), the Court interpreted Article 7150(7) R. C. S. Texas 1925, to mean that:

> ". . . an organization cannot be an institution of purely public charity unless its funds, property and assets are pledged and used to provide for the basic needs of the sick, distressed and needy, whether the benefits be extended only to a small segment of society or to the public generally.
>
> ". . . included also in the concept that an institution of purely public charity is one which dispenses

> aid to the sick, the distressed and the needy by providing for their basic needs."

Petitioner has not shown it has accomplished ends wholly benevolent and admits that it was not organized with the intent of alleviating poverty. All Petitioner has shown is that it provides air conditioned housing to those who are able to pay the price of $72.50 to $76.50 monthly rental. Petitioner has never shown it benefited any persons but those who were able to take advantage of living in its apartments. Although Petitioner introduced testimony from several professors, it was not shown that their theories were applicable to the operation of Petitioner or relevant to any conditions in the City of Waco. Petitioner has failed to show a benefit to any person so there is no connection between the professors' theories and the actual end result of the apartment complex. Petitioner has been in operation for several years and any benefit should be recognizable. Since Petitioner did not introduce evidence of any benefit, it is apparent Petitioner has not accomplished ends which are wholly benevolent no matter what theory or theories it relies upon for a purported tax exempt status.

The Court of Civil Appeals held, "Methodist does not alleviate suffering caused by inadequate housing."

Texas is not alone in holding that providing housing at cost does not accomplish ends wholly benevolent. The Ohio Supreme Court in *Philada Home Fund v. Board of Tax Appeals*, 5 Ohio St. 2d 135, 214 NE 2d 431, 432 (Ohio Sup. 1966), has stated that property used for private housing is not exempt as a charitable purpose. The Nebraska Supreme Court in *County of Douglas v. OEA Senior Citizens, Inc.*, 172 Neb. 696, 707, 111 NW 2d 719, 725, stated:

> ". . . No definition of charity found in any available lexicon is sufficient upon which to declare what has been described as charitable, that is that the furnishing of low-cost housing at its real cost is charitable."

Petitioner failed to produce a single witness who would testify that the apartment complex improved his way of life.

Petitioner's request for exemption fails under Texas law because it was not shown that any wholly benevolent ends were accomplished.

Third, a purely public charity must "benefit persons indefinite in number and personality by preventing them, through absolute gratuity from becoming burdens to society or the state."

On Page 9 of Petitioner's Application, Petitioner admits that it does not benefit persons indefinite in numbers and personality by preventing them through *absolute gratuity* from becoming burdens to society or the State under Texas law. If an institution does not lessen a financial burden, which means the institution bears the burden of providing for the needs of the unfortunates which the society or the State would bear, that institution does not meet the third test under Texas law. Justice Norvell in *River Oaks Garden Club v. City of Houston*, 370 SW 2d 851, 857 (Tex. Sup. Ct. 1963), interpreted the third portion of the test to mean:

> ". . . the only charity which is eligible for legislative exemption is one whose activities will directly lessen a financial burden which would otherwise be borne by the taxpayer."

Petitioner completely fails the third portion of the test. A set rental is charged for the apartments and those who do not possess the necessary dollars are EVICTED. Petitioner has never provided housing as an absolute gratuity. It follows that Petitioner has never relieved society or the State of a financial burden. On the contrary, Petitioner has attempted to shift a greater burden to society and the State by asking that all municipal services be provided Petitioner free of charge. This means those not living in Petitioner's apartments will have to shoulder an extra load to make up for petitioner who asks for a tax exemption. Those

who Petitioner now purports to "aid" would be saddled with an extra burden of having to pay more taxes to make up for the taxes which the community would lose if Petitioner was granted a tax exemption.

Regardless of what theory Petitioner purports to espouse as a purpose for gaining a tax exemption, and Petitioner has regularly jumped from one to another, Petitioner's operation has always denied him an exemption under Texas law. Each time Petitioner's "purpose" changes, it becomes more vague and further from meriting a tax exemption under the law by which all institutions of purely public charity are judged.

Petitioner has not prevented a single person from becoming a burden to society or the State through absolute gratuity. Petitioner has not presented a scintilla of evidence that Petitioner has operated in a manner calculated to lessen the burden to society or the State. In Texas the rule of law has long been established that lofty purpose clauses do not make an institution one of purely public charity and tax exempt if the institution is not truly operating as should a tax exempt public charity. The Texas Supreme Court in *River Oaks Garden Club v. City of Houston*, 370 SW 2d 851, 856 (Tex. Sup. Ct. 1963), stated the rule:

> "No more may a charter declaration of a worthwhile purpose make an institution one of purely public charity if it is not one in fact."

The test is whether or not the property is actually used for charitable purposes under Texas law which becomes a question of fact: *Malone-Hogan Hospital Clinic Foundation, Inc. v. The City of Big Spring, et al*, 288 SW 2d 550, 554, 555 (Tex. Civ. App. 1956) ref. N.R.E.

Petitioner has failed to meet any portion of the three part test which is applied to all institutions seeking tax exemptions under Article 7150(7) R.C.S. Texas 1925; therefore, Petitioner cannot be classified as a tax exempt institution of purely public charity.

Petitioner's last feeble attempt to gain a tax exemption is based upon Amendment XIV, Section 1 of the Constitution of the United States and "National Policy."

The applicable principles regarding the relation of the Fourteenth Amendment to State tax laws are clear. As in the present case, when the dispute is between the State and one or more of its citizens, a wide discretion is left to the State. The only rule is that "the State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary." *Allied Stores of Ohio, Inc. v. Bowers,* 358 U.S. 522 (1959). It has been shown that the courts did not raise any additional barriers against Petitioner than all other institutions in the State of Texas must pass in order to be declared tax exempt institutions of purely public charity. Article 8, Sec. 2 of the Texas Constitution provided the Legislature with powers to declare certain types of public charities as exempt from ad valorem taxation. The Legislature enacted Article 7150(7) R.C.S. Texas 1925, under authority vested in it by the constitutional provision and the Courts have interpreted both Constitution and statute.

This Court, in *Allied Stores of Ohio, Inc. v. Bowers,* supra, stated the discretion allowed the States under the Fourteenth Amendment:

> " 'If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law."

The classification of Article 8, Sec. 2 of the Texas constitution and Article 7150(7) R.C.S. Texas 1925, as well as the strict construction of both by the Texas courts are reasonable. The Texas Supreme Court in the early case of *Morris v. Lone Star Chapter No. 6, Royal Arch Masons,* 5 SW 519, (Tex. Sup. Ct. 1887), supplied the reason for strictly limiting public charities when it stated:

> "The reason of these rules would seem to be that it is but just and equitable that the property of all

> persons and associations of persons should bear the burdens of government in equal proportion; and hence it is to be presumed that the law makers did not intend to make an exception in favor of any class unless that intention be clearly expressed."

The *Morris* case has been cited and followed by more than thirty subsequent tax cases in the State of Texas.

The limitations placed upon tax exemptions by the framers of the Texas Constitution and the Legislators are well explained by the *Morris* case. Such limitations are neither arbitrary nor capricious, but are most reasonable in this age when many groups and associations are seeking tax havens.

Petitioner's Fourteenth Amendment theory that it should be exempt because it claims others who do not meet the test are on the exempt roll leaves it in an untenable position because it amounts to no more than the spoiled child crying that "two wrongs make a right." As a matter of fact, Petitioner has not attempted to prove Respondents exempt institutions which do not meet the three part test nor is there a scintilla of evidence in the record which would show there are any institutions on the tax exempt rolls which do not meet the test. If one institution is being exempted though not meeting the requirements, Petitioner's remedy would be to enjoin the tax roll until that institution is placed on the tax roll. The availability of such a remedy in the State of Texas is clearly shown by the Court in the tax exemption case of *City of Houston v. Baker*, 178 SW 820, 824 (Tex. Civ. App. 1915) Ref.:

> ". . . there can be no question that equity may properly interfere to restrain the further operation by the city of the plan of taxation which is manifestly and admittedly unconstitutional and illegal."

There is no remedy which would grant an exemption just to even the score between Petitioner and the spurious tax free institution. The failure to tax one person has never been a legal excuse by which another can escape taxation and this was made clear by the Texas Supreme Court in the case of *City of Arlington v. Cannon*, 271 SW 2d 414, 416 (Tex. Sup. Ct. 1954):

> "'The government does not lose its right to taxes justly owing on one parcel of property, by reason of the failure of its officers, either negligently or designedly, to assess other property that is likewise taxable.'"

Respondents are not trenching upon the prerogatives of the National Government. Petitioner is a corporation incorporated under Texas laws and is not the National Government or an extension of it. Petitioner is not leasing from the National Government nor is it dealing with those who deal with the National Government. Therefore, neither *Phillips Chemical Company v. Dumas Independent School District*, 361 U.S. 376 (1960), nor *Moses Lake Homes v. Grant*, 365 U.S. 744 (1960), are in point. Neither purportedly following a goal set out as National Policy nor being insured by the government results in the same privity as existed in the two cases.

The States are not bound by "National Policy" because an administrative statement does not impress a legislative duty or burden on the State. If "National Policy" is to place a duty upon a State, it must be through some system of federal common law. The fact that there is no federal common law was effectively stated in the landmark case of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). Therefore, society and the State are not saddled with the burdens Petitioner attempts to throw on their backs, through a nebulous

"National Policy" theory. There being no duty for society or the State to assume the burden, Respondents cannot be held responsible for not assuming it.

WHEREFORE, Respondents respectfully pray that Petitioner's Application for Writ of Certiorari be denied.

Respectfully submitted,

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I certify that a copy of the foregoing Respondents' Brief has been deposited in the United States Mail addressed to Mr. David B. Kultgen, Beard & Kultgen, P. O. Box 529, Waco, Texas, and Mr. Thomas P. Brown, 1008 20th Street, NW, Washington, D. C., Attorneys of record for Petitioner, Methodist River Oaks Apartments, Inc.

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APPENDIX

APPENDIX A

Opinion of the Court of Civil Appeals of the Tenth Supreme Judicial District of Texas

This is an appeal from a judgment denying Methodist River Oaks Apartments, Inc. exemption from the payment of ad valorem taxes upon its property.

Methodist brought suit for a declaratory judgment that its apartments located in the City of Waco and La Vega School District be exempted from ad valorem taxes, on the ground that the Constitution and laws of Texas exempt from ad valorem taxes, properties of purely public charities, which are devoted to charitable purposes. Trial was before the court without a jury which, after hearing, entered judgment denying Methodist tax exemption as a charitable organization.

Methodist appeals on four points, contending the trial court erred in holding that its apartment complex was subject to ad valorem taxes.

Methodist is a non-profit corporation organized under the laws of Texas "to provide dwelling accommodations for families displaced from urban renewal areas," "and to assist further the provision of housing for moderate and low income families." It was formed by 4 negro Methodist churches. The members of the corporation are chosen by the churches which organized it; and no officer or member of the corporation has ever profited from its operation. The apartment complex contains 152 units; is a first-class facility; and is integrated. The units rent for $72.50 and $76.50 per month; one apartment has been furnished a tenant at a reduced rental, but no apartment has been provided rent free. The apartments are 79% occupied; are advertised in both Waco telephone book and in newspapers; are centrally air conditioned and heated; have 30 inch range; venetian blinds; prompt maintenance; central TV antenna; and 11.8 cubic foot refrigerators.

Other housing is available in Waco. In 1960 there were 2,036 vacant housing units in Waco. Maxey Apartments are operated by Public Housing Authority and rented for $23 to $71 per month and have 90% occupancy. Private housing is available in the area of Methodist at $50 per month.

Article 8, Section 2 of the Texas Constitution, Vernon's Ann. St., provides: "* * * the legislature may, by general laws, exempt from taxation property used for public purposes * * *."

And Article 7150 Vernon's Ann. Tex. Civ. St. provides:

> "The following property shall be exempt from taxation: * * * 7. Public charities.—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, * * *."

(1) Exemptions from taxation are never favored, and in construing laws exempting any organization, all doubts are resolved against the exemption. Morris v. Lone Star Chapter No. 6, Royal Arch Masons, 68 Tex. 698, 5 S. W. 519; Santa Rosa Infirmary v. City of San Antonio, Tex. Com. App. 259 S. W. 926.

(2) Whether an organization is a "purely charitable institution" so as to entitle its property to tax exemption is a question of fact; and the burden is on the organization claiming exemption from taxation to clearly prove it. Benevolent & Protective Order of Elks, etc. v. City of Houston, Tex. Civ. App., Er. Ref., 44 S. W.2d 488; Malone-Hogan Hosp., etc. v. City of Big Spring, Tex. Civ. App., (nre), 288 S. W.2d 550.

(3) An organization is not an "institution of purely public charity" within the constitutional and statutory tax exemption, unless the organization: 1) makes no gain or profit; 2) accomplishes ends wholly benevolent; 3) benefits persons, indefinite in numbers and in personalities, by preventing them, through absolute gratuity, from becoming

burdens to society and to the State. City of Houston v. Scottish Rite, 111 Tex. 191, 230 S. W. 978; River Oaks Garden Club v. City of Houston, Sup. Ct., 370 S. W.2d 851.

In River Oaks, supra, the court says:

> "'One ground upon which exemptions from taxation of charitable institutions * * * can be justified * * * is that they minister to human and social needs which the state itself might and does to a greater or less extent undertake to satisfy. The ultimate obligation of the state thus is discharged by the private charity. To that extent the state is relieved of its burden. * * *'"

(4) Applying the rules of law to the factual situation here involved, we think the trial court correctly denied Methodist tax exemption as a purely public charity.

Methodist does not alleviate suffering caused by inadequate housing, and it provides no service which the State would be obligated to assume. The record reflects many other sources of adequate housing at rates below those charged by Methodist. And if a family does not live in centrally air conditioned and heated housing, renting for $72.50 to $76.50 per month with 30 inch range, venetian blinds, prompt maintenance, centrally located TV antenna, and an 11.8 foot refrigerator, such family will not necessarily under the record here, become an obligation of the community or State.

All appellant's points and contentions are overruled. The judgment is correct. Affirmed.

FRANK G. McDONALD
Chief Justice

APPENDIX B

Text of Constitutional Provisions and Statutes Which the Case Involves

Amendment XIV, Section 1 of the Constitution of the United States which reads:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article 3, Section 56 of the Texas Constitution which reads:

> "Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:
>
> "The creation, extension or impairing of liens;
>
> "Regulating the affairs of counties, cities, towns, wards or school districts;
>
> "Changing the names of persons or places;
>
> "Changing the venue in civil or criminal cases;
>
> "Authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;
>
> "Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;
>
> "Vacating roads, town plats, streets or alleys;

"Relating to cemeteries, grave-yards or public grounds not of the State;

"Authorizing the adoption or legitimation of children;

"Locating or changing county seats;

"Incorporating cities, towns or villages, or changing their charters;

"For the opening and conducting of elections, or fixing or changing the places of voting;

"Granting divorces;

"Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

"Changing the law of descent or succession;

"Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators, or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

"Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

"Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

"Fixing the rate of interest;

"Affecting the estates of minors, or persons under disability;

"Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

"Exempting property from taxation;

"Regulating labor, trade, mining and manufacturing;

"Declaring any named person of age;

"Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

"Giving effect to informal or invalid wills or deeds;

"Summoning or empannelling grand or petit juries;

"For limitation of civil or criminal actions;

"For incorporating railroads or other works of internal improvements;

"And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities."

Article 8, Section 2 of the Texas Constitution which reads:

"Sec. 2. All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places or (of) religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land;

places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void."

Article 7150 (7), R.C.S. Texas 1925, as amended by Acts of the Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Sec. 1, Vernon's Annotated Texas Civil Statutes which reads:

"The following property shall be exempt from taxation, to-wit:

"7. Public charities. All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefits of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the